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Judge Dismisses Halperin Wiretap Suit Against Nixon

By Ronald Kessler
Washington Post Staff Writer

Senior U.S. District Court Judge John Lewis Smith Jr. yesterday threw out a 1973 lawsuit former White House national security aide Morton H. Halperin filed against former president Richard M. Nixon and three of Nixon's top aides for ordering wiretaps of his home telephone.

Smith said that Nixon and former national security affairs adviser Henry A. Kissinger, former attorney general John N. Mitchell and former White House Aide H.R. (Bob) Haldean, as government officials at the time, are entitled to immunity from such private lawsuits. In particular, the president enjoys "absolute immunity" from such actions, the judge said.

In giving the defendants summary judgment, Smith determined that there were no factual disputes that needed to be determined in a trial.

A spokesman for the Justice Department, which defended the suit, said yesterday, "We're pleased with the opinion, and we think it speaks for itself."

Halperin, now director of the Center for National Security Studies, said he would appeal. His lawyer, Mark H. Lynch of the American Civil Liberties Union, said the facts are "highly disputed" and therefore require a trial before a verdict.

In the lawsuit, Halperin alleged that Nixon illegally ordered wiretap-

ping for 21 months beginning in 1969, first to determine if Halperin was leaking classified information to the press and then to glean political information about Nixon's opponents.

Since then, the lawsuit has spawned dozens of newspaper articles revealing the details of the wiretapping and the workings of the Nixon White House. The suit has been the subject of numerous court decisions, including one in 1977, when Smith granted Halperin damages of \$5, saying he had not suffered monetary damages. Smith also did not find Kissinger culpable.

The U.S. Court of Appeals later overturned the award of only token damages, and said the case against

Kissinger should go to trial. A split Supreme Court decision on the case had the effect of upholding the appeals court ruling.

In his opinion yesterday, Smith explained that the law has changed since he ruled against Nixon and his aides seven years ago. He quoted from a 1982 Supreme Court decision on a suit filed against Nixon by Defense Department cost-cutter Ernest A. Fitzgerald over his firing from the government.

The court found then that the president is protected from liability for any "acts within the 'outer perimeter' of his official responsibility."

According to Smith, Halperin contends that, while Nixon initially acted within the scope of his pres-

idential duties in ordering the wiretap, he later used the wiretaps to collect "partisan political information, and, at that point, he acted beyond the authority granted to him by the Constitution."

But Smith said that exploring the possible motives for the continued wiretapping would be "highly intrusive," vitiating the purpose of the doctrine granting the president absolute immunity.

"This court finds that Richard Nixon had the power to investigate national security leaks, and that his actions were within the 'outer perimeter' of his constitutional duties," Smith said. The other defendants enjoy "qualified immunity," a more limited shield against suits, he ruled.